

Topic 5: Use of Current “Unsuppressed” Fish Consumption Rate

EPA’s Decision: In February 2015, EPA disapproved Maine’s HHC based on a FCR of 32.4 grams/day because “the data used to determine the FCR for tribal sustenance consumers must reasonably represent tribal consumers taking fish from tribal waters and fishing practices unsuppressed by concerns about the safety of the fish available for them to consume.” 2015 Decision at 3. “In the absence of a local survey of current fish consumption, adjusted to account for suppression, that documents FCRs for sustenance fishing in the tribal waters, EPA finds that the Wabanaki Study contains the best currently available information for the purpose of deriving an FCR for HHC adequate to protect sustenance fishing for such waters.” *Id.* at 41. EPA concluded “that the Wabanaki Study contains the best currently available information for the purpose of deriving an FCR for HHC adequate to protect sustenance fishing for such waters.” *Id.* This is because “[i]t is local, focused on the areas most heavily used by tribal members today. It identifies historic FCRs based on reasonable estimates for total calories and protein intake per day. Heritage rates provide reliable evidence of what unsuppressed rates would be for tribal populations.” *Id.* at 41-42. “Because the Wabanaki Study documents a substantially higher tribal sustenance fish consumption rate than the FCR on which Maine’s HHC are based, EPA cannot conclude that the HHC are based on a sound scientific rationale consistent with 40 C.F.R. 131.11(a) and protect the sustenance fishing use for the waters in Indian lands.” *Id.* at 42. EPA cannot conclude tha the HHC

Maine’s Position:

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EPA’s Response:

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